



## THE USE OF A POWER OF ATTORNEY IN IMMOVABLE PROPERTY TRANSACTIONS

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A Power of Attorney (POA) is a written document which provides legal authorization to a person (commonly referred to as an 'Agent'), to act for and on behalf of another person (referred to as a 'Principal').

### **REQUIREMENTS FOR A VALID POWER OF ATTORNEY**

1. It must be in writing and clearly define the Principal, the Agent and the acts/tasks authorized.
2. The parties must be 18 years or older and have legal capacity i.e. they must be of sound mind.
3. It must be signed by the Principal in the presence of 2 competent witnesses.
4. The Principal must have the capacity to carry out the act/task that he/she is granting i.e. he/she cannot grant more powers than he/she has at the time.
5. If signed outside of South Africa, the POA will need to comply with Rule 63 of the High Court Rules.

### **TERMINATION OF A POWER OF ATTORNEY**

A Principal can terminate a POA at any time. A POA can also be automatically terminated when the Principal:

- Dies
- Becomes mentally impaired
- Becomes insolvent and the estate is sequestrated

Once any of the above occurs, the Agent no longer has the authority to act on behalf of the Principal thus any actions taken by an Agent after the POA has been terminated will be invalid.

In immovable property transactions there are 4 types of POA's:

1. Power of Attorney to Pass Transfer – this is a POA that the Seller signs to authorize the transferring attorney to register the transfer of the property in the Deeds Office.
2. Power of Attorney for a Bond – In the event the Purchaser finances the property purchase through a financial institution then this document is signed by the Purchaser authorising the registration of a bond over the property.
3. General Power of Attorney ('GPA')
4. Special Power of Attorney ('SPA')

### **GENERAL POWER OF ATTORNEY ('GPA')**

A GPA grants wide powers to the Agent to attend to various general actions in multiple transactions on the Principal's behalf. A GPA must contain express authority empowering an Agent to deal with the immovable property. However, the property need not be listed or described.

It is also not necessary to register a general GPA even if it will be used to transfer one immovable property. It will, however, need to be registered in the Deeds Office if it is to be used for the transfer of multiple immovable properties. If the GPA is to be used in more than one Deeds Office, a copy must be obtained from the Deeds Office in which it was registered, and such copy is then lodged and registered in other Deeds Office as required for use.

### **SPECIAL POWER OF ATTORNEY ('SPA')**

This is the most common and prudent POA used for conveyancing and notarial purposes. A SPA grants limited powers to an Agent as it authorizes the Agent to perform a specific act in one transaction only. An example would be authorizing the Agent to sign all the transfer, bond or notarial documents in a transaction on behalf of the Principal. The SPA lapses on completion of the act and is not required to be registered in a Deeds Office. It must, however, fully describe the property to be valid for use in a Deeds Office.

A POA is especially useful if you travel often. As can be seen from above not all Powers of Attorney are the same and since each person needs a POA to suit their unique circumstances, it is best to consult with us to ensure that your POA will be valid and fits the purpose for which it is required.

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